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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT

★ APR 08 2009 ★

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JOSEPH LICARI,

BROOKLYN OFFICE

Plaintiff,

09

1447

- against -

COMPLAINT

DOUGLAS ELLIMAN PROPERTY MANAGEMENT,

Defendant.

WEINSTEIN, J.

REYES

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Plaintiff, **JOSEPH LICARI**, by and through his attorneys, **THOMAS F. BELLO, ESQ., P.C.**, complaining of the Defendant, hereby alleges as follows:

PRELIMINARY STATEMENT

1. This action arises from unlawful employment discrimination by the Defendant against the Plaintiff on the basis of Title VII of the Civil Rights Act of 1964 and the Plaintiff's age in violation of the Age Discrimination in Employment Act (29 U.S.C. Sec. 621-634).
2. Specifically, the Plaintiff alleges that the Defendant wantonly, recklessly, knowingly and purposefully sought to and did deprive plaintiff of employment, position, title and pay through a pattern of discrimination, retaliation, misrepresentation, harassment, character assassination, and abuse and manipulation of laws rules and regulations.

3. Said acts were done knowingly, with the consent and condonation of the Defendant Douglas Elliman Property Management with the intended and expressed purpose of punishing, silencing, isolating, removing and violation of the rights of plaintiff as protected by statutes, rules and regulations. Said activity was known to officials, directors, supervisors and policy makers and was accepted and supported as policy, practice and custom.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. Sec. 1331. This action properly lies in the United States District Court, Eastern District of New York pursuant to 28 U.S.C. 1391(b)(1) in that Defendant does business in this District.

PARTIES

5. Plaintiff is a resident of the State of New York, County of New York.

6. Upon information and belief, at all times hereinafter mentioned, Defendant Douglas Elliman Property Management, (hereinafter referred to as "Douglas Elliman") was and still is a corporation duly organized and existing by virtue of the laws of the States of New York and having a place of business located at 405 West 23rd Street, New York, NY 10011.

FACTUAL ALLEGATIONS

7. Plaintiff is a male over the age of forty (40). Plaintiff's date of birth is October 26, 1927.

8. Plaintiff was hired by the Defendant in or about 1995. His job title at that time was and remained up until his termination "Relief Lobby Attendant". Plaintiff worked at a minimum of 4 hours each afternoon, 5 days per week. Plaintiff was excellent in his duties and was well regarded by coworkers as well as tenants in the building where Plaintiff was employed.

9. Since April of 2005 Plaintiff has been targeted in many ways to be terminated. Defendants actions however were never warranted nor justified and were merely pretextual in nature in an attempt to disguise the real motive which was age discrimination. Comments were made by Management regarding Plaintiff's age and inquiring as to when he would be retiring.

10. The first attempt by Defendants to eliminate Plaintiff's employment was in April of 2005 when Plaintiff was purportedly laid off as a result of a reduction in force. However Plaintiff was the only person laid off at that time and was targeted by his supervisor Owen Sullivan. Upon Plaintiff's filing grievance with the Union he regained his position back working new hours beginning Monday May 16, 2005.

11. Plaintiff was to begin his new shift on May 16, 2005 at 7am and work to 3pm Monday thru Wednesdays. As instructed he reported to work at 7am. Due to his medical condition, prostate cancer, Plaintiff had to go to the restroom immediately. Upon his return from the restroom, just 1 hour and 55 minutes into his new tour, Plaintiff was immediately terminated. Plaintiff challenged his termination when he filed for unemployment benefits with the New York State Department of Labor, Division of Unemployment Insurance.

12. Although the Defendant maintained that Plaintiff abandoned his position, a finding was made by the Administrative Law Judge after a hearing that "The credible evidence establishes that the claimant (Plaintiff) had a personal emergency that required him to rush to a nearby restroom. The claimant was absent less than 5 minutes and immediately returned to his post. The claimant had good cause for his absence and his absence failed to rise to the level of misconduct." Hence finding Defendants reasons to be nothing more than another pretext for another attempt to terminate the Plaintiff's employment based upon his age. Although Plaintiff was reinstated to work on September 22, 2005, he was again summarily terminated for no reason on November 21, 2005. Once again Defendants maintained that he refused to accept their decision to eliminate the 4 hour Relief Lobby Attendant shift. This again was pretextual and Plaintiff's position is being performed by individuals much younger than Plaintiff since his termination.

13. Upon information and belief, the Defendants actions of discriminating against employees over the age of forty (40) is a pattern of unlawful treatment which continues to this date.

14. Upon information and belief, this discrimination has caused everlasting harm, embarrassment, humiliation, demoralization and mental anguish.

AS AND FOR A FIRST CAUSE OF ACTION

Age Discrimination Disparate Treatment

15. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1. through 14..

16. Plaintiff was at all times material hereto an employee covered by the Age Discrimination in Employment Act (29 U.S.C.A. Section 621), prohibiting discrimination in employment on the basis of age, in that Plaintiff was a member of the protected and recognized group of workers over the age of 40.

17. At all times material hereto, Defendant was an employer within the meaning of the Age Discrimination in Employment Act (29 U.S.C.A. section 621), and as such was prohibited from discriminating in employment decisions on the basis of age.

18. Defendant discriminated against Plaintiff in violation of the Age Discrimination in Employment Act by denying him similar privileges of employment, taking away his job responsibilities, inconsistent with his work performance, all on the basis of his age. Defendant repeatedly tarnished Plaintiff's personal and professional reputation and credibility by their actions, wherein subjecting Plaintiff to such treatment,

with the untrue implication to Plaintiff's peers, co-workers and others in contact with Plaintiff that Plaintiff was less competent than others in the department.

19. As a proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses, all to Plaintiff's damage in an amount according to proof.

20. The conduct of Defendant was outrageous, was done in a deliberate, callous, malicious, fraudulent and oppressive manner intended to injure Plaintiff, was with an improper motive amounting to malice and spite caused by bias and was done in conscious disregard of Plaintiff's rights.

21. As a result of Defendant's intentional actions Plaintiff's was terminated on the basis of his age therefore entitling Plaintiff to doubling her special damages pursuant to 29 U.S.C.A. section 626(b).

22. Plaintiff filed a timely charge of discrimination with the Equal Employment Opportunity Commission, and received a Notice of Right to Sue. Therefore, Plaintiff has exhausted all available and required administrative remedies.

JURY TRIAL DEMAND

23. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

DAMAGES

A. Back pay, Frontpay, difference in pension benefits and any other retroactive privileges of employment Plaintiff would have incurred if he would have remained under the employ of Defendant;

Compensatory and punitive damages for professional humiliation, embarrassment and emotional distress in the amount of Two Million (\$2,000,000.00) Dollars;

Double damages as a result of Defendant's willful conduct.

B. An award of attorneys' fees, costs and disbursement of this action;

C. Any and other relief which this Court deems just and proper.

Dated: April 2, 2009
Staten Island, New York

Yours, etc.,

THOMAS F. BELLO, ESQ., P.C.
Attorneys for Plaintiff

By 

Thomas F. Bello, Esq.
(TFB1625)

42B Seth Court
Staten Island, NY 10301
(718) 981-9191

TO: Douglas Elliman Property Management
405 West 23rd Street
New York, NY 10011

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 JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(I.a) PLAINTIFFS <u>Joseph Licari</u>		DEFENDANTS <u>Douglas Elliman Property Management</u>	
(b) County of Residence of First Listed Plaintiff <u>New York</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>New York</u> OFFICE (IN U.S. PLAINTIFF CASES ONLY) <u>COURT E.D.N.Y.</u>	
(c) Attorney's (Firm Name, Address, and Telephone Number) <u>Thomas F. Bello, Esq., 718-981-9191</u> <u>42B Seth Court Staten Island, NY 10301</u>		Attorneys (If Known) <u>Reavis Parent Lehrer LLP</u> <u>BROOKLYN OFFICE</u>	

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	Incorporated or Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): <u>Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967</u>
	Brief description of cause: <u>The Defendant has subjected Plaintiff to adverse employment actions.</u>

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE _____ SIGNATURE OF ATTORNEY _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPEARING BY _____ JUDGE JPW MAG. JUDGE RER

09-1447

ARBITRATION CERTIFICATION

I, Thomas F. Bello, counsel for Plaintiff Joseph Licari do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: NO

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? NO

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? NO

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ✓

No _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ (If yes, please explain)

No ✓

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: TFB1625

E-MAIL Address: tfblaw@msn.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures (EFP)" and consent to the electronic service of all papers.

Signature: 